RAHIM USOFF & ORS.

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, JOHOR BAHRU
MAHADEV SHANKAR J
[CRIMINAL APPEAL NO. 30 OF 1983]
31 JANUARY 1984

CRIMINAL LAW AND PROCEDURE: *Sentencing - Principles guiding the appellate Court in reviewing sentencing - Criminal Procedure Code ss. 285, 313(ii), 319.*

The appellants appealed against sentence passed by the Magistrate. One of the grounds of appeal was that the Learned Magistrate did not set out at length, the material upon which he relied in support of the sentence he imposed.

Another point which had to be considered by the Learned Judge was the matter of the absence of the third appellant and his bailor.

Held:

[1] The principles guiding the Appellate Court in its review on sentencing is not whether it would have passed a different sentence from that given in the Court below but whether the Learned Magistrate had fallen into error by taking into consideration matters which he should not have or by committing some error of law.

[2] As the third appellant has been given several opportunities to have his appeal heard and has still failed to appear with his bailor, the third appellant's appeal is dismissed and the Learned President is directed to require the bailor to show cause why the bond should not be forfeited.

Legislation referred to:
Criminal Procedure Code, ss. 285, 313 (ii), 319

JUDGMENT

Mahadev Shankar J:

This is an appeal against sentence by the 1st, 2nd and 4th appellants. As regards the 3rd appellant, he was absent at the hearing as the Notice had not been served upon him.

I therefore adjourned the matter so far as he was concerned but the appeal proceeded as regards the other appellants.

I have heard the submissions of Counsel for the appellants and the DPP.

Even though some criticism was levelled against the grounds of judgment in that the Learned Magistrate did not set out at length the material upon which he relied in support of the sentence which he imposed, I am satisfied that he was fully alive to all the material which was urged upon him in mitigation.

I have come to this conclusion because the sentences were imposed immediately after the Learned Magistrate had been addressed at some length by Counsel for the accused.

The appellants are intelligent and educated people. It is a pity that they did not use their talents to improve the lot of their less fortunate brethren instead of swindling them.

The principles by which the Appellate Court is guided in an appeal against sentence is not whether it would have passed a different sentence from that given in the Court below but whether the Learned Magistrate had fallen into error by taking into consideration matters which he should not have or by committing some error of law.

There is no material upon the record to suggest that the Learned Magistrate had erred in principle and in all the circumstances of the case I have put aside the fact that had I been trying this case the sentences would have been very much more severe.

The appeals by the first and second appellants are dismissed.

As regards the third appellant when this appeal came on for hearing on 16 October 1983 Mr. Bala who was his Counsel disclosed that he was not present. The DPP formally applied for a warrant for the arrest of the third appellant and it then appeared that the Notice of Appeal had not been personally served upon him. The DPP then applied for an order that the Notice of Hearing be served on the third appellant and on his bailor and his appeal was adjourned for hearing to 11 December 1983. When the matter came up on 11 December 1983 the third appellant was still absent. Owing to a bereavement in the family his Counsel Mr. Bala was also absent and a new date was accordingly fixed in January 1984 to proceed with the matter.

Thus this appeal has once again come up for disposal before the Court today. The third appellant is still absent and so is his bailor.

In these circumstances I have exercised my powers under s. 313(ii) of the Criminal Procedure Code and have accordingly directed that this Court will in all the circumstances refuse to consider this appeal further and hereby makes an Order that the appeal of the third appellant Juraimi bin Suib is hereby dismissed.

In accordance with the provisions of s. 285 of the Criminal Procedure Code the Registrar of this Court shall issue a warrant for the execution of the sentence passed by the Learned Magistrate.

The disposal of the bail bond also remains to be considered and as to this I hereby certify this Judgment to the Learned President as provided by s. 319 of the Criminal Procedure Code and do direct the Learned President to require the bailor for the third appellant to show cause why his bond should not be forfeited and to take such other action as the justice of the case requires.

As regards the fourth appellants I have already held at the first hearing of this appeal that the conviction against him and the sentence be set aside and nothing more needs to be said about him.

Also found at [1984] 2 CLJ 121